

CAJ5zels

sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 Cr. 614 (VM)

5 OSCAR ZELEDON,

6 Defendant.

7 -----x

8
9 October 19, 2012
9:20 a.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: DANIEL CHUNG

17 Assistant United States Attorney

18 KEHON & FLEISCHER, DUNCAN & FERRANTE

Attorneys for Defendant

19 BY: JOSEPH FERRANTE

CAJ5zelS

sentence

1 (Case called)

2 THE COURT: This is a proceeding in the matter of
3 United States v. Zeledon, docket no. 11 CR 614, and it is
4 scheduled as the sentencing the defendant in this matter.

5 Counsel, please enter your appearances for the record.

6 MR. CHUNG: Daniel Chung for the government. Good
7 morning, your Honor.

8 MR. FERRANTE: Joseph Ferrante for Mr. Zeledon. Good
9 morning, your Honor.

10 THE COURT: Good morning.

11 I have read and reviewed the presentence investigation
12 report dated October 9th, 2012, prepared in connection with
13 today's sentencing of Mr. Zeledon.

14 Mr. Chung, has the government read and reviewed the
15 report?

16 MR. CHUNG: Yes.

17 THE COURT: Does the government have any objections to
18 the report to raise at this point?

19 MR. CHUNG: No.

20 THE COURT: Mr. Ferrante, have you read and reviewed
21 the report?

22 MR. FERRANTE: I have, your Honor. I have no
23 objection.

24 THE COURT: And have you had an opportunity to discuss
25 it with your client?

CAJ5zelS

sentence

1 MR. FERRANTE: I have.

2 THE COURT: Thank you.

3 Mr. Zeledon, please rise. Mr. Zeledon, have you read
4 and reviewed the presentence report?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you discussed it with your attorney?

7 THE DEFENDANT: Yes, sir.

8 Thank you. Be seated.

9 On September 7th, 2012, pursuant to a plea agreement,
10 Mr. Zeledon pled guilty before Magistrate Judge James Francis
11 to Count Six of indictment S1 11 CR 614 which charged him with
12 conspiracy to commit visa fraud in violation of 18, U.S.C.
13 Section 1546(a), a class D felony.

14 On October 4, 2012, having received and reviewed the
15 transcript of Mr. Zeledon's plea, the Court accepted the guilty
16 plea and the Court now reiterates its acceptance of
17 Mr. Zeledon's guilty plea.

18 Mr. Chung, does the government have any additional
19 comment for the Court's consideration in connection with
20 sentencing?

21 MR. CHUNG: No, your Honor.

22 THE COURT: Thank you.

23 Mr. Ferrante, do you have any additional comments in
24 connection with sentencing?

25 MR. FERRANTE: No, your Honor. Just to thank the

CAJ5zelS

sentence

1 government once again for being open to the expedited PSR and
2 to have a sentencing date placed as quickly as possible, and
3 also to your Honor and your staff for helping us accomplish
4 that. I appreciate it on behalf of myself and my client.

5 THE COURT: Thank you.

6 Mr. Zeledon, please rise. Is there anything would you
7 like to say on your behalf before the Court imposes sentence?

8 THE DEFENDANT: Just I just want to thank you, your
9 Honor, for helping me out with my injury, sending me to the
10 hospital, and I'm sorry about doing something against this
11 government that has given me so much that I love.

12 THE COURT: Please be seated.

13 In accordance with the decision by the United States
14 Supreme Court in United States v. Booker, while the United
15 States Sentencing Guidelines are not mandatory, the Court
16 nonetheless must consult those guidelines and take them into
17 account when sentencing. Therefore, the Court has considered
18 the findings of fact stated in the presentence report as well
19 as the guidelines analysis and the recommendations contained
20 therein.

21 The Court has weighed this information along with
22 factors listed in 18, U.S.C. Section 3553(a) in coming to its
23 final sentencing decision in this case.

24 The Court adopts the factual recitation in the
25 presentence report, therefore the Court finds that under the

CAJ5zels

sentence

1 guidelines Mr. Zeledon's offense level amounts to 9 and his
2 Criminal History Category falls into Category I. The
3 recommended range of imprisonment of that offense level and
4 Criminal History Category is 4 to 10 months.

5 Mr. Zeledon pled guilty to one count of conspiracy to
6 commit visa fraud. The probation office has recommended a
7 sentence of time-served followed by two years of supervised
8 release. Subsection (a)(1) of 18, U.S.C. Section 3553 requires
9 that Courts take into consideration the nature and
10 circumstances of the offense and the history and
11 characteristics of the defendant. Subsection (a) (2) of
12 18, U.S.C. Section 3553 requires that the Court consider the
13 need for the sentence to promote certain objectives of the
14 criminal justice system, namely punishment, specific and
15 general deterrence, and rehabilitation.

16 Pursuant to Section 3553(a)(6) the Court is also
17 directed to consider the need to avoid unwarranted sentencing
18 disparities among defendants with similar records and similar
19 offenses in other cases as well as in the case at hand.

20 Mr. Zeledon, please rise.

21 Taking into account the nature and circumstances of
22 the offense and history and characteristics of the defendant
23 and considering all of the factors listed in 18, U.S.C. Section
24 3585(a), the Court finds that a sentence of time-served is
25 reasonable and appropriate and that such a sentence is

CAJ5zels

sentence

1 sufficient but not greater than necessary to promote the proper
2 objectives of sentencing.

3 Mr. Zeledon, upon your release from imprisonment you
4 shall be placed on supervised release for a term of two years.
5 The Court finds that this sentence, again, is reasonable in
6 consideration with all of the factors listed in 18, U.S.C.
7 Section 3553(a). I will not impose a fine because the Court
8 has determined that you do not have the ability to pay such a
9 fine; however you are ordered to pay to the United States a
10 special assessment of \$100 which shall be due immediately.

11 Mr. Chung, is there any forfeiture requirement in this
12 case?

13 MR. CHUNG: No, your Honor.

14 THE COURT: Mr. Zeledon, you must comply with standard
15 condition 1 through 13 of supervised release on the following
16 mandatory conditions:

17 You shall not commit another federal, state or local
18 crime. You shall not illegally possess a controlled substance.
19 You shall not possess a firearm or destructive device. The
20 mandatory drug testing condition is suspended due to the
21 imposition of a special condition requiring drug treatment and
22 testing.

23 In addition, Mr. Zeledon, you shall obey the following
24 special conditions:

25 You shall provide the probation officer with access to

CAJ5zels

sentence

1 any requested financial information, you shall participate in
2 an alcohol aftercare treatment program under co-payment plan
3 which may include testing via breathalyzer at the direction and
4 discretion of the probation officer. You shall obey the
5 immigration laws and comply with the directives of the
6 immigration authorities and you shall submit your person,
7 residence, place of business, vehicle or any other premises
8 under your control to a search on the basis that a probation
9 officer has reasonable belief that contraband or evidence of a
10 violation of the conditions of release may be found.

11 The search must be conducted at a reasonable time and
12 in a reasonable manner. Failure to submit to search may be
13 grounds for revocation. You shall inform any other residents
14 that the premises may be subject to search pursuant to this
15 condition.

16 Mr. Zeledon, do you understand each of these
17 conditions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You shall report to the nearest probation
20 office within 72 hours of release from custody. The Court
21 recommends that you be supervised by the district of residence.
22 The sentence, as stated, is imposed.

23 Mr. Zeledon, to the extent that you have the right to
24 appeal your sentence and you are unable to pay the costs of an
25 appeal, you have the right to apply for leave to appeal in

CAJ5zels

sentence

1 forma pauperis, meaning a poor person. If you make such a
2 request the Clerk of Court must immediately prepare and file a
3 notice of appeal on your behalf.

4 Do you understand your right to appeal, to the extent
5 that it may exist?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Chung, are there any remaining counts
8 or underlying indictments that need to be dismissed at this
9 time?

10 MR. CHUNG: Yes. The government moves to dismiss all
11 open counts against the defendant in this case.

12 THE COURT: So ordered.

13 Anything else from the government?

14 MR. CHUNG: No. Thank you, your Honor.

15 THE COURT: Anything else from the defendant?

16 MR. FERRANTE: No, your Honor.

17 THE COURT: Thank you. Have a good day and have a
18 good weekend.

19 o0o
20
21
22
23
24
25